

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. OF 2018.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Public Interest Litigation (PIL).

AND

IN THE MATTER OF:

1. Human Rights and Peace for Bangladesh (HRPB), represented by Advocate Mamun Aleem, Hall No. 2 Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

.....Petitioner.

-V E R S U S-

1. Bangladesh represented by the Secretary, Ministry of Environment and Forrest, Bangladesh Secretariat, P.S -, Shahbag, Dhaka, Bangladesh.

2. The Secretary, Ministry of LGRD, Bangladesh Secretariat, P.S:-Shahbag, Dhaka, Bangladesh.

3. The Secretary, Ministry of Water Resources, Bangladesh Secretariat, P.S -, Shahbag, Dhaka, Bangladesh.

4. The Director General, Department of Environment, Paribesh Bhaban, E-16, Sher-E Bangla Nagar, Agargaon, Dhaka, Bangladesh.

5. The Director, Department of Environment, Director, Environment

Directorate, Divisional Office, Boyra, Khulna, Bangladesh.

6. The Deputy Commissioner (D.C), Khulna, Office of the Deputy Commissioner, Khulna, Bangladesh.

7. The Superintendent of Police (S.P), Khulna, Post and District- Khulna, Bangladesh.

8. The Director (Enforcement), Department of Environment, Paribesh Bhaban, E- 16, Sher-E-Bangla Nagar, Agargaon, Dhaka.

9. The Upazila Nirbahi Officer (UNO), Batiaghata Upazila, District- Khulna, Bangladesh.

10. Assistant Commissioner (Land), Upazila: Batiaghata, District- Khulna.

11. The officer in Charge (O.C), Batiaghata Police Station, P.S Batiaghata, District- Khulna, Bangladesh

.....Respondents.

AND
IN THE MATTER OF:

The Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002), and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০.

AND
IN THE MATTER OF:

Inactions/failure of the respondents to take necessary steps to remove illegal earth filling/encroachment/ construction within the area of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, Khulna and to remove all the structures/earth filling/encroachment as made within the territory of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, Khulna, violating the provisions of law.

G R O U N D S -

I. For that the duty and responsibility vested upon the respondents to serve the people and initiate lawful steps and they are also duty bound to obey the provisions of law. But the respondents have failed to perform the duties and responsibility as vested upon them against any violation of the provisions of law by way of earth filling, building permanent structures in the bed of the Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna and illegal encroachment of bed and territory Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna, which is illegal. Hence direction may be given upon the respondents to stop earth filling, illegal encroachment and making building structures in the territory Doania khal .

II. For that disregard to laws and legal provisions and failure to ensure proper implementation of laws, the respondents have caused damage to the environment; to the khal and to the local people as well as the right to life of the people. Under these circumstances the respondents are legally bound to protect the khal in accordance with law at one hand and to remove the earth filling/encroachment as made in the khal.

III. For that under Section 5 of the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০, also prohibits change of the nature of any land that has been earmarked as a natural reservoir. As per section 8 of the Act 2000 any person who acts in contravention of the Act is liable to imprisonment not exceeding 5 years or a fine not exceeding Taka 50,000 or both. Hence, a direction may be given to remove the said encroachment/earth fillinf from the territory of Doania khal and to remove the structures from the territory of the khal.

IV. For that encroachment, earth filling and making permanent structures and dam within the territory of Doania khal is contrary to all applicable laws of the country. That the encroachment of khal and making permanent dam in the territory of Doania khal has created obstruction to the normal movement of the said khal and boats plying in the said khal.

V. For that the environment is being continuously endangered and threatened by various illegal activities such as encroachment, earth filling and making illegal structures in the territory of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna,. The unauthorized activities are the main causes for environmental degradation. Taking advantage of the silence of the concern authority, the illegal activities is being continued and as a result the environment is being destroyed.

VI. For that the non-implementation of the laws by the respondents undermine rule of law and jeopardize people's fundamental right as guaranteed under Article 32 of the Constitution of Bangladesh.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to:-

a) Issue a Rule Nisi calling upon the Respondents to show cause as to why failure/inaction of the respondents to remove all kinds of encroachment/earth filling/dam construction within the area of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna, should not be declared illegal and without lawful authority.

AND

Why a direction should not be given upon the respondents to demolish/evict/remove all encroachment/earth filling/dam construction within the territory of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna

AND

Why a direction should not be given upon the respondents to protect the Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna to its original position as per C/S record.

b) Pending hearing of the rule direct the respondents to take legal actions against the persons responsible for illegal encroachment/ dam construction/earth filling within the territory of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna, violating the provisions of the Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002), and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, 2000.

c) Pending hearing of the rule directs the respondents to maintain statuesque in

respect of any further construction/earth filling/encroachment/dam construction within the territory of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna.

d) Pending hearing of the rule direct the respondent no. 6, 9 and 10 to conduct a survey of the area of Doania Khal under Mouza Tiukhali, Upazila. Batiaghata, District-Khulna as per C/S record identifying the construction/earth filling/encroachment/dam construction situated within the area of Doania Khal and submit a report within 60 days before this court through affidavit.

e) Direct the office to serve notices upon the respondents at the cost of office.

f) Upon hearing the parties and the cause if any shown makes the rule absolute.

g) Pass such other or further order or orders as your Lordships may deem fit and proper.

Present Status

The case was filed and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi upon the respondents and granted ad-interim order. The matter is pending before the Hon'ble High Court Division.
